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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,684	06/10/2009	Alejandro Fontes Munoz	0003009USU/2442	4969
27623	7590	06/22/2011		
OHLANDT, GREELEY, RUGGIERO & PERLE, LLP ONE LANDMARK SQUARE, 10TH FLOOR STAMFORD, CT 06901			EXAMINER CRAIG, PAULA L	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 06/22/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,684	Applicant(s) FONTES MUNOZ, ALEJANDRO	
	Examiner PAULA CRAIG	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/28/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration filed June 10, 2009 is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02. The oath or declaration is defective because: It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be “material to patentability as defined in 37 CFR 1.56.” The declaration filed June 10, 2009 uses the phrase “material to the examination”.

Specification

2. The title of the invention given in the declaration filed June 10, 2009 is not the same as the title indicated on page 1 of the specification. Applicant is requested to indicate the preferred title of the invention, and if necessary amend the specification to include the preferred title.

Claim Objections

3. Claims 3, 7, and 9 are objected to because of the following informalities: In Claim 3, line 4, “said curved section said and straight” should be “said curved section and said straight”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4 and 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 requires that the sieve has a suitable porosity. As gravel and calculi come in a wide size range, it is not clear to the Examiner what porosity would be considered suitable.

7. Claims 1 and 10 each requires a sieve of a textile nature. It is not clear to the Examiner what materials would or would not have a textile nature. For example, would woven metal fabric or screen, wire-cloth, netting, plastic mesh, nonwoven fabric, paper, or filter paper be considered as having a textile nature?

8. Claims 1 and 10 each requires an elliptical-shaped ring. It is not clear to the Examiner in which plane the ring is elliptical. Would a ring with an elliptical cross-section be elliptical-shaped?

9. Claim 2 requires that the are curved sections joined in an articulated fashion, and also that the curved sections are integrally joined to one another. The meaning of this limitation is not clear to the Examiner; possibly "integrally joined" is a typographical error.

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10. In Claim 3, the relationship between the curved and straight sections and the side flange is not clear to the Examiner. Does Claim 3 require that the side flange is proximate the curved and straight sections?

11. Claim 7 requires a retracted position of the proximal section of the handle, in which the flange is located outside it, the swiveling of the rod being possible, and an extended position in which the flange is locked in the groove. The meaning of the terms "retracted position", "extended position" and "it" are not clear to the Examiner in light of Applicant's specification. Does "retracted position" mean that the flange is retracted out of the groove, or does "retracted position" refer to the telescoping of the handle?

12. The metes and bounds of these limitations are not readily ascertained.

13. Claim 4 recites the limitation "its lower end" in line 3. Claim 7 recites "said proximal section" in line 1. Claim 9 recites the limitation "the moving section" in line 2. There is insufficient antecedent basis for these limitations in the claims.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,251,938 to Goldman.

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16. For Claim 1, Goldman teaches a sieve device fully capable of collecting gravel or calculi expelled through a urethra during urination, without modification; the sieve is of a textile nature and suitable porosity (wall member 19 has a textile nature; microscopic size pores 21 of wall member 19 have a suitable porosity; Abstract, Figs. 1-3, col. 1, line 19-40, col. 1, line 53 to col. 2, line 29). Goldman teaches the sieve having a mouth and provided at the level of the mouth with a ring (ring includes the part of bent wire frame 11 not forming support arm 12; Figs. 1-3, col. 1, lines 53-60). The ring is associated to a handle for handling the device (handle includes support arm 12 and handle 14; Figs. 1-3, col. 1, lines 53-60). The ring of Goldman is fully capable of being formed into an elliptical shape, and also of being folded over itself to reduce the volume of the device in an inoperative situation, without modification (Figs. 1-3, col. 1, lines 53-60; note that wire can be bent as desired).

17. For Claim 4, the sieve of Goldman is fully capable of forming a cylindrical teat at its lower end opposite to the mouth, and collecting expelled gravel or calculi, without modification (Abstract, Figs. 1-3, col. 1, line 19-40, col. 1, line 53 to col. 2, line 29).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

19. Claims 2-3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldman in view of U.S. Patent No. 2,457,922 to Robinson.

20. For Claim 2, Goldman teaches all the limitations of Claim 1, as described above in paragraph 16. Goldman teaches the ring of the mouth of the sieve including two rods, each having a curved section and a section entering the handle (rods include wire frame 11; support arm 12 enters handle 14; curved sections are the part of frame 11 not included in support arm 12; Figs. 1-3, col. 1, lines 53-60). Goldman teaches the curved sections being integrally joined (Figs. 1-3, col. 1, lines 53-60). The rods of Goldman are fully capable of allowing the swiveling of one of curved sections with respect to the other of the curved sections, without modification (Figs. 1-3, col. 1, lines 53-60). Goldman does not teach the rods being joined in an articulated fashion at an end of a curved section. However, rods joined in an articulated fashion at an end of a curved section are well known in the net art. Robinson confirms this and teaches a sieve mouth with a ring including two rods, each of the two rods having a curved section and a straight section (rods include sections 10 and rods 8; curved sections are sections 10; straight sections are rods 8; Figs. 1-4, col. 1, lines 1-7, col. 1, line 36 to col. 2, line 18). Robinson teaches

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the rods being joined in an articulated fashion at an end of a curved section, and each of the straight sections entering the handle, to allow the swiveling of the curved sections with respect to the other of the curved sections (Figs. 1-4, col. 1, line 36 to col. 2, line 24). Robinson teaches that this provides a collapsible frame (col. 1, lines 49-53, col. 2, lines 14-19). It would have been obvious to one of ordinary skill in the art to modify Goldman to include the rods being joined in an articulated fashion at an end of a curved section, and each of the straight sections entering the handle, as taught by Robinson, to provide a collapsible frame, as taught by Robinson.

21. For Claim 3, Goldman teaches a rod with a curved section, and a handle (rods include wire frame 11; curved sections are the part of frame 11 not included in support arm 12; handle is 14; Figs. 1-3, col. 1, lines 53-60). Goldman does not teach a side flange for locking the rod. Robinson teaches a side flange for locking the rod proximate the curved section and the straight section, the side flange being lockable into a groove of the handle (rods include sections 10 and rods 8; curved sections are sections 10; straight sections are rods 8; side flange includes stop dogs 15; groove includes channel 7; Figs. 1-4, col. 1, lines 1-7, col. 1, line 36 to col. 2, line 18). Robinson teaches that this provides a collapsible frame (col. 1, lines 49-53, col. 2, lines 14-19). It would have been obvious to one of ordinary skill in the art to modify Goldman to include a side flange for locking the rod proximate the curved section and the straight section, the side flange being lockable into a groove of the handle, as taught by Robinson, to provide a collapsible frame, as taught by Robinson.

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22. For Claim 9, Goldman teaches a handle 14 (Fig. 1, col. 1, lines 53-61). Goldman does not teach a fixed section of the handle having movement guides for a moving section. Robinson teaches a fixed section of a handle having movement guides for a moving section (fixed section includes socket 6; moving section includes one of rods 8; movement guides include center projections of channels 7; Figs. 1-4, col. 1, lines 1-7, col. 1, line 36 to col. 2, line 18). Robinson teaches that this provides a collapsible frame (col. 1, lines 49-53, col. 2, lines 14-19). It would have been obvious to one of ordinary skill in the art to modify Goldman to include a fixed section of a handle having movement guides for a moving section, as taught by Robinson, to provide a collapsible frame, as taught by Robinson.

23. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,169,331 to Baker in view of U.S. Patent Application Publication No. 2004/0055912 to Cooper.

24. For Claim 10, Baker teaches a net assembly fully capable of collecting gravel and/or calculi expelled through the urethra, without modification (Abstract, Figs. 1-6, col. 1, lines 5-17, col. 3, lines 6-47, col. 4, lines 4-48, col. 6, lines 59-65). The device has a sieve of a textile nature and suitable porosity, the sieve having a mouth and provided at the level of the mouth a ring (sieve includes net 28; ring includes frame 12; Figs. 1-6, col. 1, lines 5-17, col. 3, lines 6-47, col. 4, lines 4-48, col. 6, lines 59-65). The ring is fully capable of being elliptically shaped and of being folded over itself to reduce the volume of the device in an inoperative situation, without modification (Figs. 1-6, col. 1, lines 5-

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17, col. 3, lines 6-47, col. 4, lines 4-48; note that frame 12 is formed from flexible, resilient metal and can be readily bent into a desired shape). Baker does not teach a case. However, cases for nets are well known in the art. Cooper teaches a case formed by two shells joined by means of a hinge, the case capable of receiving a net when the net is in a non-operable orientation (shells include lower housing 11 and upper housing 15; hinge includes hinge 20; Abstract, Figs. 1-4, paragraphs 8-10, 16-22). Cooper teaches that the case holds the net and prevents it from becoming entangled with other items (paragraphs 16, 23). It would have been obvious to one of ordinary skill in the art to modify Baker to include a case formed by two shells joined by means of a hinge, the case capable of receiving the device when the device is in a non-operable orientation, as taught by Cooper, to hold the device and prevent it from becoming entangled with other items, as taught by Cooper.

Conclusion

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAULA CRAIG whose telephone number is (571)272-5964. The examiner can normally be reached on 8:30 AM-4:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAULA L. CRAIG/
Examiner, Art Unit 3761

/Jacqueline F Stephens/
Primary Examiner, Art Unit 3761